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Measures to eliminate international terrorism

Measures to eliminate international terrorism

Report of the Working Group

Chairman: Mr. Rohan **Perera** (Sri Lanka)

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I. Introduction

1. The General Assembly, in its resolution 55/158 of 12 December 2000, inter alia, decided that the Ad Hoc Committee established by resolution 51/210 of 17 December 1996 should meet from 12 to 23 February 2001 to continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. It further decided that the work should continue during the fifty-sixth session of the General Assembly between 15 and 26 October 2001, within the framework of a working group of the Sixth Committee.

2. Accordingly, the Sixth Committee, at its 2nd meeting, on 8 October 2001, established such a Working Group and re-elected Mr. Rohan Perera (Sri Lanka) as its Chairman.

3. The Sixth Committee, also at its 2nd meeting, decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. At its 1st meeting, on 16 October 2001, the Working Group noted the intention of the representatives of the International Committee of the Red Cross and the International Criminal Police Organization (Interpol) to participate in its discussions as observers.

4. The Working Group held five meetings, from 15 to 26 October 2001.

5. The Working Group had before it the report of the Ad Hoc Committee on the work of its fifth session[1] containing, inter alia, a discussion paper prepared by the Bureau of the Ad Hoc Committee on articles 3, 8 and 11,[2] and a reference paper prepared by India on articles 4, 5, 9, 10, 12 and 13;[3] as well as the report of the Working Group of the Sixth Committee, issued at the fifty-fifth session of the General Assembly,[4] containing, inter alia, a working document submitted and partially revised by India on the draft comprehensive convention on international terrorism.[5] The Working Group also had before it the report of the Working Group of the Sixth Committee issued at the fifty-third session of the General Assembly,[6] containing a revised text of the draft convention on the suppression of acts of nuclear terrorism, proposed by the Friends of the Chairman.[7]

6. The Working Group also had before it oral and written proposals submitted during its meetings. The texts of the written proposals are contained in annex II to the present report. A list of written amendments and proposals submitted by delegations to the fifth session of the Ad Hoc Committee and to the Working Group of the Sixth Committee at the fifty-fifth session of the General Assembly, in connection with the elaboration of a draft comprehensive convention on international terrorism, is contained in annex III.

7. A request was made to circulate the comments by the United Nations High Commissioner for Refugees relating to the draft comprehensive convention on international terrorism,[8] for the information of delegations.

8. The report of the Working Group was considered and adopted by the Working Group at its 5th meeting, held on 26 October.

II. Proceedings of the Working Group

9. At its 1st meeting, on 15 October, the Working Group was addressed by the Legal Counsel of the United Nations, Mr. Hans Corell. The Working Group then held a general exchange of views on issues within its mandate, pursuant to paragraphs 13 and 14 of General Assembly resolution 55/158. The general exchange of views was concluded at the 2nd meeting of the Working Group, held on the same day. Annex V to the present report contains an informal summary of the general exchange of views, prepared by the Chairman. The summary is intended for reference purposes only, and not as a record of the discussions.

10. Discussions were subsequently held both in the Working Group and in informal consultations.

A. Elaboration of a comprehensive convention on international terrorism

11. The Working Group continued its work on the elaboration of a draft comprehensive convention on international terrorism on the basis of the text submitted by India contained in annex II to the report of the Working Group.[4] At its 2nd meeting, the Working Group considered draft articles 14 to 17 and 19 to 22. The discussions on these and other draft articles were continued in informal consultations. On the basis of those discussions, a discussion paper on articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17 bis, 20 and 22 was prepared by the Friends of the Chairman (A/C.6/56/WG.1/CRP.3). These articles, together with article 23, were subsequently reviewed in informal consultations.

12. At the 4th meeting of the Working Group, on 25 October 2001, the coordinators of the informal consultations on articles 3 to 17 and 19 to 23, as well as on articles 2, 2 bis and 18, presented oral reports to the Working Group.

13. Following the informal consultations and taking into account the comments and written proposals by delegations, the Friends of the Chairman prepared revised texts of articles 3 to 17 bis and 20 to 27 (see annex I.A). In addition, the coordinator prepared informal texts for articles 2 and 2 bis (see annex I.B).

14. At the 5th meeting of the Working Group, on 26 October 2001, the Chairman noted that the texts in document A/C.6/55/WG.1/L.2, annex II, would continue to serve, together with all written and oral proposals, as a reference for future discussions on the preamble and articles 1 and 18. He stated further that articles 2, 2 bis and 18 were interrelated and were negotiated as a package. Their final outcome would depend on consensus being reached on all of them. The Chairman also recalled that annexes II and III to the draft comprehensive convention on international terrorism submitted by India (A/C.6/55/L.2, annex II) were part of the travaux préparatoires and might be used in the future by interested States.

B. Elaboration of a draft international convention for the suppression of acts of nuclear terrorism

15. At its 1st meeting, the Chairman of the Working Group observed that while the text of the draft international convention had been substantially completed, the

question of the scope of its application remained to be resolved. He stressed that the finalization of the work on the draft convention depended primarily on the political will to reach a compromise on the outstanding issues and he urged delegations to demonstrate the necessary flexibility in order to bring the negotiation of the instrument to a successful conclusion at the current session of the Working Group.

16. The Chairman appointed Mr. Richard Rowe (Australia) as the new coordinator for the draft convention to replace Ms. Cate Steains (Australia), who was no longer available to act in that capacity. The Working Group paid tribute to Ms. Steains for her valuable contribution to the work on the draft convention.

17. Discussions on the draft convention were held in informal consultations. At the 4th meeting of the Working Group, the coordinator for the draft convention presented an oral report to the Working Group.

C. Question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations

18. At the 1st meeting of the Working Group, the Chairman reminded delegations that several speakers had referred to the question of convening a high-level conference during the recent debate in the plenary of the General Assembly on measures to eliminate international terrorism. He drew the attention of the Working Group to the relevant sections of the report of the Ad Hoc Committee[2] and invited all interested delegations to continue their efforts aimed at advancing the work on the question. The Chairman also encouraged delegations to approach him with any concrete proposals on the matter.

III. Recommendations and conclusions

19. At its 5th meeting, on 26 October 2001, the Working Group decided to refer the consideration of the present report to the Sixth Committee. The Working Group also decided, bearing in mind General Assembly resolution 55/158, to recommend to the Sixth Committee that work should continue as a matter of urgency on the elaboration of a draft comprehensive convention on international terrorism, building upon the work accomplished during the meetings of the Working Group.

20. Also at its 5th meeting, the Working Group decided to recommend that the coordinator for the draft international convention for the suppression of acts of nuclear terrorism should continue consultations on the draft convention and report to the Sixth Committee on those consultations.

Notes

[1] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 37* (A/56/37).

[2] Ibid., annex I.

[3] Ibid., annex II.

[4] A/C.6/55/L.2.

[5] Ibid., annexes I and II.

[6] A/C.6/53/L.4.

[7] Ibid., annex I.

[8] A/C.6/56/WG.1/INF/1.

Annex I

A. Revised text of articles 3 to 17 bis and 20 to 27, prepared by the Friends of the Chairman

Draft comprehensive convention on international terrorism

Article 1

...

Article 2

...

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 8 and 12 to 16 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State may also establish its jurisdiction over any such offence when:

(a) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(b) The offence is committed wholly or partially outside its territory, if the effects of the conduct or its intended effects constitute or result in, within its territory, the commission of an offence set forth in article 2;

(c) The offence is committed against a national of that State; or

(d) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(e) The offence is committed in an attempt to compel that State to do or to abstain from doing any act; or

(f) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 2 in cases where the alleged offender is present in its territory and where it does not extradite such a person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7[1]

States Parties shall take appropriate measures, in conformity with the relevant provisions of national and international law, including international human rights law, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offence referred to in article 2.

Article 8

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, including, if necessary and where appropriate, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission, within or outside their territories, of those offences, including:

(a) Measures to prohibit the illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the commission of offences set forth in article 2;

(b) In particular, measures to prohibit the establishment and operation of installations and training camps for the commission of offences set forth in article 2.

2. States Parties shall further cooperate in the prevention of the offences set forth in article 2, in accordance with their national law, by exchanging accurate and verified information and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds, property, equipment or other instrumentalities relating to the commission of such offences.

3. States Parties may exchange information through the International Criminal Police Organization (Interpol) or other international and regional organizations.

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[1] The following paragraph will be added to the preamble:

"*Noting* that the Convention relating to the Status of Refugees signed at Geneva on 28 July 1951 and the Protocol relating to the Status of Refugees done at New York on 31 January 1967 do not provide a basis for the protection of perpetrators of terrorist acts, and stressing the importance of the full compliance by the parties to those instruments with the obligations embodied therein, including, in particular, the principle of non-refoulement,".

Article 9

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence referred to in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 10

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence referred to in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, paragraph 1, subparagraph (c), or paragraph 2, subparagraph (a), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraph 1 or 2, and if it considers it advisable, any other interested

States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 11

1. The State Party in whose territory the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite the person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case, without undue delay, to its competent authorities for the purpose of prosecution through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and that State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law and, in particular, the Standard Minimum Rules for the Treatment of Prisoners.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 9.

Article 14

None of the offences referred to in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

2. For the purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for the time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

1. The offences referred to in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request from another State Party with which it has no extradition treaty, the requested State may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences referred to in article 2 as extraditable offences between themselves, subject to the conditions provided for by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 17 bis

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or its applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 18

...

Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 21

[*Deleted*]

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by the law in force in that State Party.

Article 23

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

1. This Convention shall be open for signature by all States from ... to ... at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. This Convention shall enter into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 26

1. A State may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which such notification is received by the Secretary-General of the United Nations.

Article 27

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on ... 2001.

B. Informal texts of articles 2 and 2 bis, prepared by the Coordinator[2]

Article 2

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or

(c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss,

when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.

2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of this article.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of this article; or

(c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Article 2 bis

Where this Convention and a treaty dealing with a specific category of terrorist offence would be applicable in relation to the same act as between States that are parties to both treaties, the provisions of the latter shall prevail.

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[2] These texts represent the stage of consideration reached at the current session. It is understood that further consideration will be given to these texts in future discussions, including on outstanding issues.

Annex II

A. Written amendments and proposals submitted by delegations in connection with the elaboration of a draft comprehensive convention on international terrorism

Country/submitter	*Symbol*	*Subject*
1. Guatemala	A/C.6/56/WG.1/CRP.1 and Corr.1 (English only)	Revised version of document A/C.6/56/L.2: additional article (provisionally numbered 22A)
2. Hungary	A/C.6/56/WG.1/CRP.2	Article 2
3. Friends of the Chairman	A/C.6/56/WG.1/CRP.3	Revised texts of articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17 bis, 20 and 22
4. Colombia	A/C.6/56/WG.1/CRP.4	New preambular paragraph 1
5. -	A/C.6/56/WG.1/CRP.5 and Add.1-5	Draft report of the Working Group
6. Holy See	A/C.6/56/WG.1/CRP.6	Article 10, paragraph 4 bis
7. Holy See	A/C.6/56/WG.1/CRP.8[1]	Article 12

1. Proposal submitted by Guatemala[2] (A/C.6/56/WG.1/CRP.1 and Corr.1)

Additional article (provisionally numbered 22A)

Whenever an offence has occurred to which this Convention and any particular one of the treaties enumerated in the preamble to this Convention, or any other future more specific counter-terrorism treaty, apply, the two treaties shall, as between States parties to both of them, be applied; provided, however, that, should any incompatibility exist between particular provisions of the two treaties, those of this Convention shall prevail, that any provision of this Convention or any of the other treaties mentioned that defines the scope of application of the treaty containing it shall apply only to that treaty, and that joint application is not mandatory insofar as the sanctioning of individual offences is concerned.

Explanatory remarks

1. With regard to the important question of the relationship between the *comprehensive* convention against terrorism whose elaboration is now being sought, the 12 previous international treaties on aspects of the same topic, and any future international instrument of this kind, the delegation of Guatemala takes the view that

[1] Document A/C.6/56/WG.1/CRP.7 was withdrawn.

[2] Revised version of proposal No. 1 in A/C.6/55/L.2, annex III.

as far as possible, the impact of the comprehensive convention should be combined with that of the others. In this way, if an offence occurs which is covered by the comprehensive treaty and by one of the sectoral treaties, so that we have what are called overlapping offences, the provisions of both treaties should in principle be applied as far as possible. In this manner the comprehensive convention, which enriches the content of the sectoral treaties and is in turn enriched by them, would maximize the impact of the international struggle against terrorism (thus ensuring that the future convention truly deserves to be called a comprehensive, rather than a complementary, one). It might also be thought that because, technically speaking, the provisions of the comprehensive instrument represent what might be regarded as state-of-the-art international legal rules against terrorism, the comprehensive convention should prevail in any situation where it is incompatible with one of the applicable sectoral treaties.

2. These were the ideas underlying the additional draft article which the delegation of Guatemala submitted to the Working Group at its latest session (see proposal No. 1 in annex III to the report of the Working Group on its 2000 session (A/C.6/55/L.2)).

3. The delegation of Guatemala is aware, however, that its proposal seems capable of causing difficulties. These difficulties have been explained in statements since made by other delegations, especially during this year's session of the Ad Hoc Committee established by General Assembly resolution 51/210. Reference was made in these statements to cases in which certain rules contained in a comprehensive convention against terrorism could not prevail over rules embodied in sectoral treaties without creating difficulties for national authorities in respect of their practical application. These considerations are summarized in paragraph 20 of annex V of the relevant report of the Committee.[3]

4. The delegation of Guatemala understands that the difficulties in question derive largely from the fact that some States have, in respect of each international anti-terrorism treaty to which they are parties, adopted legislation incorporating its provisions into their domestic law. This would mean that if a comprehensive anti-terrorism treaty were adopted and they became parties to it, they could not, in respect of offences to which both the comprehensive convention and one of the sectoral ones applied, create a kind of "cocktail" combining elements of both treaties. It seems to the delegation of Guatemala, however, that the difficulties that may arise from this are not insuperable. All that would be required, if the article now proposed by Guatemala were included in the comprehensive convention, would be for each of these States, in acceding to the comprehensive convention, to incorporate the text of this article, mutatis mutandis, into its domestic legislation. It is important to note that in taking that step, a State would not be acting for reasons of mere expediency; it would be giving effect to *an obligation* imposed on it by general international law (unless the provisions of treaties to which it is a party are automatically incorporated into its domestic law).

5. It has been observed (see annex V, para. 20, of the above-mentioned report of the Ad Hoc Committee), that the absence in some sectoral conventions of provisions which will probably feature in the comprehensive convention was deliberate, and that therefore the gaps in the sectoral conventions should not be filled in. But such

[3] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 37* (A/56/37).

cases, should they exist, are not a reason to reject the additional article proposed by Guatemala. It would in fact be sufficient to add to that article a paragraph identifying the provisions in question and exempting them from the cumulative application of the comprehensive convention and the relevant sectoral convention.

6. The difference between the first sentence of the new proposal by Guatemala and the first sentence of the initial proposal is explained by the usefulness of indicating when and in what circumstances the issue of the relationship between the comprehensive convention and one of the sectoral conventions specifically arises.

7. Some examples given below should illustrate the foregoing remarks (and also shed light on the general issues pertaining to the relationship between a comprehensive convention and sectoral conventions). In view of the fact that no agreement has yet been reached on the text of a comprehensive convention, and that by comparison with the 10 sectoral conventions which preceded it, the International Convention for the Suppression of Terrorist Bombings (many of whose provisions will certainly appear in the future comprehensive convention) can be regarded as a treaty of *comprehensive* scope, the examples will refer to the relationship between that Convention and one of the sectoral treaties which preceded it, namely, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as "the 1988 Convention"). It will be assumed that the Terrorist Bombings Convention, none of whose clauses refers to its relationship with the previous sectoral treaties (which is certainly regrettable), contains an article, which we will call "article AA", identical in substance to the article now proposed by Guatemala for inclusion in the future comprehensive convention.

8. Let us imagine that a bomb placed for terrorist purposes on board a passenger ship registered in State A explodes, sinking the ship, which is then on the high seas. Let us also suppose that the perpetrator takes refuge in the territory of State B, and that both States A and B are parties to the Terrorist Bombings Convention and to the 1988 Convention.

9. In view of the provisions of article 1, paragraph 6, article 2, paragraph 1, and article 6, paragraph 1 (b), of the Terrorist Bombings Convention, and of article 3, paragraph 1 (c), and article 4, paragraph 1, of the 1988 Convention, the provisions of the two treaties defining the respective offences create an overlap between the two treaties. Article "AA" of the Terrorist Bombings Convention will then apply.

10. Under article AA, article 3 of the Terrorist Bombings Convention would apply to that Convention and only to that Convention, and article 4 of the 1988 Convention would apply to that Convention and only to that Convention. The effects of this clearly illustrate the advantages of the proposal by Guatemala. Let us suppose that in a case where a ship is sunk by the explosion of a bomb placed on board by a terrorist, the sinking occurs in the territorial sea of a State party to both Conventions. If the ship is navigating exclusively within that territorial sea, its route will not have taken it outside the latter, and the perpetrator is apprehended in the territory of the State in whose territorial sea the offence is committed, article 4 of the 1988 Convention will prevent the application of that Convention, but not the Terrorist Bombings Convention. Therefore, if any of the victims are of a nationality different from that of the perpetrator of the offence, the Terrorist Bombings Convention will apply under its article 3. If, on the other hand, all the victims are of the same nationality as the perpetrator, the Terrorist Bombings Convention will be

inapplicable under its article 3; however, the 1988 Convention will be applicable under its article 4, if the route the ship was due to take would have brought it into the high seas or into the territorial sea of another State. (In this case the situation will be the same as would arise from the adoption of any of the amendments submitted which, in cases of overlapping offences between the comprehensive convention and a sectoral convention, give primacy to the latter.)

11. If, in a specific case of overlapping offences between the Terrorist Bombings Convention and the 1988 Convention, the provisions that limit the former's scope with respect to the activities of military forces (last preambular paragraph, article 1, paragraph 4, and article 19, paragraph 2) prevent it from being applied, that will not prevent the application of the 1988 Convention since the latter does not contain equivalent provisions.[4] (In this case the situation would again be the same as would result from the adoption of any of the amendments submitted under which, in cases of overlapping offences between the comprehensive convention and a sectoral convention, the latter would prevail.)

12. Under article AA of the Terrorist Bombings Convention, article 6, paragraph 2, of that Convention and article 6, paragraph 2, of the 1988 Convention would apply cumulatively, to the extent that a State had availed itself of the options offered by each of them. (As in the cases described in paragraph 10 above, one of the two Conventions may be applicable while the other is not.)

13. Article 7 of the Terrorist Bombings Convention and article 7 of the 1988 Convention would apply cumulatively, thus resolving the slight discrepancies between the two articles by having the comprehensive convention prevail.[5]

14. The members of each of the following pairs can apply cumulatively: article 2 of the Terrorist Bombings Convention and article 3 of the 1988 Convention;[6] article 14 of the former and article 10, paragraph 2, of the latter; and article 8, paragraph 1, of the former and article 10, paragraph 1, of the latter.

15. Article 8, paragraph 2, and articles 11, 12 and 13 of the Terrorist Bombings Convention have no equivalents in the 1988 Convention. Therefore, they will apply in cases of overlapping offences between the two Conventions. The same is true of

[4] It is assumed that the case is not one in which article 2 of the 1988 Convention precludes its application.

[5] More specifically, paragraphs 1 and 2 of both articles would apply as indicated, as would article 7, paragraph 6, of the International Convention for the Suppression of Terrorist Bombings and article 7, paragraph 5, of the 1988 Convention. The provisions of article 7 of the Terrorist Bombings Convention which have no equivalent in article 7 of the 1988 Convention (i.e., para. 3 (c) and para. 5) would apply.

[6] Obviously, since subparagraphs (b) and (c) of article 2, paragraph 3, of the Terrorist Bombings Convention have no equivalent in the 1988 Convention, they cannot give rise to an overlapping offence between the two Conventions, that is, an offence to which both Conventions apply. They can, however, be related to an offence of that kind. If such an offence is committed, those subparagraphs would apply to anyone whose relationship to the perpetrator(s) is among those defined in them. As the first of the two alternatives contained in article 3, paragraph 2 (b), of the 1988 Convention has no equivalent in the Terrorist Bombings Convention, it is clear that whatever was said with regard to article 2, paragraph 3 (b) and (c), of that Convention applies, mutatis mutandis, to that alternative. (Of course, the above comment is of interest only if there really is a difference between the first and second alternatives contained in article 3, para. 2 (b), of the 1988 Convention.) This mutual reinforcement between the two Conventions is one of the benefits to be derived from article AA (the Guatemalan proposal).

article 8, article 11, paragraphs 5 and 6, and article 13, paragraph 2, of the 1988 Convention, which have no equivalents in the Terrorist Bombings Convention.

16. The previous examples may not include every possible combination of provisions of the Terrorist Bombings Convention and the 1988 Convention which might illustrate Guatemala's proposal. However, they will suffice to give an idea of how the proposal would function and to demonstrate its viability.

17. The Guatemalan delegation believes that this would be confirmed by a study of the consequences of cases of overlapping offences that may occur between the Terrorist Bombings Convention and other sectoral conventions (particularly the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the 1973 New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.[7]

2. Proposal submitted by Hungary[8] (A/C.6/56/WG.1/CRP.2)

Article 2

Add a new paragraph, reading:

> The provisions of this Convention shall not apply if the act described in paragraph 1 constitutes an offence within the scope of a specific convention on terrorism when the States concerned are States parties to that convention, in which case the provisions of the specific convention shall apply.

Explanatory note

The proposal gives clear priority to already existing conventions if they are factually and legally applicable. It also extends the applicability of the comprehensive convention to cases where an act is covered by the specific convention but the latter is not applicable due to non-participation by any of the States concerned.

The comprehensive convention thereby complements the existing conventions, that is, fills in the gaps in a twofold manner:

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[7] Since most of the provisions of the comprehensive convention will doubtless coincide with those of the Terrorist Bombings Convention, it does not appear that there could be an overlapping offence between the two Conventions, or between the comprehensive convention and any of four previous sectoral conventions, namely: the 1963 Tokyo Convention on Offences and Certain Acts Committed on Board Aircraft, the 1980 Vienna Convention on the Physical Protection of Nuclear Material, the 1991 Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection and the 1999 International Convention for the Suppression of the Financing of Terrorism. Nor does it appear that there could be overlapping offences between the comprehensive convention and the 1979 International Convention against the Taking of Hostages. (It should be added that there may be overlapping offences between sectoral conventions concluded prior to the Terrorist Bombings Convention, such as the 1973 New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and between international and regional counter-terrorism conventions.)

[8] Concerning the relationship between the present draft convention and other conventions on terrorism.

(a) First, it provides the framework to cover **criminal activity not already covered** by the existing conventions;

(b) Secondly, it provides the framework for cooperation with regard to **criminal activity already covered** by a specific convention **if** the States parties to the comprehensive convention are not all parties to the specific convention concerned.

3. Revised texts of articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17 bis, 20 and 22 prepared by the Friends of the Chairman (A/C.6/56/WG.1/CRP.3)

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction except that the provisions of articles 8 and 12 to 16 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5[9]

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

[9] While it is understood that all draft articles remain under discussion until final agreement has been reached on the whole text of the draft convention, several delegations were of the view that, in particular, an agreement on article 5 is linked to an agreement on the scope of the draft convention and the definition of terrorism.

2. A State may also establish its jurisdiction over any such offence when:

(a) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(b) The offence is committed wholly or partially outside its territory, if the effects of the conduct or its intended effects constitute or result, within its territory, in the commission of an offence set forth in article 2;

(c) The offence is committed against a national of that State; or

(d) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(e) The offence is committed in an attempt to compel that State to do or to abstain from doing any act; or

(f) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 2 in cases where the alleged offender is present in its territory and where it does not extradite such a person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7[10]

States Parties shall take appropriate measures, in conformity with the relevant provisions of national and international law, including international standards of human rights, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offence referred to in article 2.

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[10] In the preamble the following paragraph will be added:

"*Noting* that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 does not provide a basis for the protection of perpetrators of terrorist acts, and noting further in this context articles 1 (f), 2, 32 and 33 of that Convention, and stressing the importance of the full compliance with the obligations embodied in that Convention, including, in particular, the principle of non-refoulement,"

Article 8

1. States Parties shall cooperate in the prevention of the offences set forth in article 2, by taking all practicable measures, including, if necessary and where appropriate, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission, within or outside their territories, of those offences including:

(a) Measures to prohibit the illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the commission of offences set forth in article 2;

(b) In particular, measures to prohibit the establishment and operation of installations and training camps for the commission of offences set forth in article 2.

2. States Parties shall further cooperate in the prevention of the offences set forth in article 2, in accordance with their national law, by exchanging accurate and verified information and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperation with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds, property, equipment or other instrumentalities relating to the commission of such offences.

3. States Parties may exchange information through the International Criminal Police Organization (Interpol) or other international and regional organizations.

Article 9

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence referred to in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 10

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence referred to in article 2 may be present in its territory,

the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, paragraph 1, subparagraph (c), or paragraph 2, subparagraph (a), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraph 1 or 2, and if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 11

1. The State Party in whose territory the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite the person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case, without undue delay, to its competent authorities for the purpose of prosecution through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and that State and the State seeking the extradition of the person agree with this option and

other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. *States Parties which are not bound by a bilateral treaty or arrangement of mutual legal assistance may, at their discretion, apply the procedure set out in annex II.*

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 9.

Article 14

None of the offences referred to in article 2 *and the acts which constitute an offence within the scope of and as defined in one of the treaties listed in annex I* shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 *or for offences within the scope of and as defined in one of the treaties listed in annex I* or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

2. For the purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for the time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

1. The offences referred to in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request from another State Party with which it has no extradition treaty, the requested State may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences referred to in article 2 as extraditable offences

between themselves, subject to the conditions provided for by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

6. *States Parties which, pursuant to paragraph 2 of this article, have agreed to consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2 may consider utilizing the procedures set out in annex III.*

Article 17 bis (former article 19)

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by the law in force in that State Party.

4. Proposal submitted by Colombia[11] (A/C.6/56/WG.1/CRP.4)

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

5. Draft report of the Working Group (A/C.6/56/WG.1/CRP.5 and Add.1-5)

...

[11] Concerning a new preambular paragraph 1.

6. Proposal submitted by the Holy See (A/C.6/56/WG.1/CRP.6)

Article 10

New paragraph 4 bis

4 bis. Any person regarding whom the measures referred to in paragraph 2 are being taken shall also be entitled to receive visits from a qualified representative of any religion or belief of that person's choice.

7. Proposal submitted by the Holy See (A/C.6/56/WG.1/CRP.8)

Article 12

Add at the end of the paragraph:

"and, in particular, the Standard Minimum Rules for the Treatment of Prisoners".

B. Written amendments and proposals submitted by delegations in connection with the elaboration of a draft international convention for the suppression of acts of nuclear terrorism

Country	*Symbol*	*Subject*
Mexico	A/C.6/56/WG.1/CRP.9	Article 4

Proposal submitted by Mexico (A/C.6/56/WG.1/CRP.9)

Article 4, new paragraph

This Convention does not address, nor can it be interpreted as addressing, in any way the issue of the legality of the use or threat of use of nuclear weapons by States.

Annex III

A. List of written amendments and proposals submitted by delegations to the fifth session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, in connection with the elaboration of a draft comprehensive convention on international terrorism[1]

Country	*Symbol*	*Subject*
1. Côte d'Ivoire	A/AC.252/2001/WP.1/Rev.1	Revised text of document A/C.6/55/WG.1/CRP.26
2. Chile	A/AC.252/2001/WP.2	Article 6, paragraph 1
3. Romania	A/AC.252/2001/WP.3	Article 1
4. Guatemala	A/AC.252/2001/WP.4	Article 2, paragraph 1
5. South Africa	A/AC.252/2001/WP.5	Article 2, paragraph 1
6. Holy See	A/AC.252/2001/WP.6	Article 10, paragraph 3
7. Pakistan	A/AC.252/2001/WP.7	New article on relationship
8. Hungary	A/AC.252/2001/WP.8	Article 8, paragraph 2, subparagraph b (ii)
9. Austria	A/AC.252/2001/WP.9	Article 8, paragraph 2
10. Hungary	A/AC.252/2001/WP.10	Article 13, paragraph 3

[1] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 37* (A/56/37), annex III.

B. List of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-fifth session of the General Assembly, in connection with the elaboration of a draft comprehensive convention on international terrorism[2]

Country	*Symbol*	*Subject*
1. Guatemala	A/C.6/55/WG.1/CRP.1/Rev.1	Additional article provisionally numbered 22 (a)
2. Costa Rica	A/C.6/55/WG.1/CRP.2	New preambular paragraph
3. Costa Rica	A/C.6/55/WG.1/CRP.3	Article 7
4. Colombia	A/C.6/55/WG.1/CRP.4/Rev.1	Article 2, paragraph 1
5. Australia and Belgium	A/C.6/55/WG.1/CRP.5	Article 2, paragraph 1
6. Belgium	A/C.6/55/WG.1/CRP.6	Article 7
7. Netherlands	A/C.6/55/WG.1/CRP.7	New paragraph 4 to article 2
8. India	A/C.6/55/WG.1/CRP.8	Revised texts of articles 1, 3, 6 and 11
9. Ukraine	A/C.6/55/WG.1/CRP.9	Article 1, paragraph 3
10. Germany	A/C.6/55/WG.1/CRP.10	Article 8, chapeau and lit. (a)
11. Austria, Belgium and Switzerland	A/C.6/55/WG.1/CRP.11	Article 14
12. Angola	A/C.6/55/WG.1/CRP.12/Rev.1	Article 8
13. Lebanon	A/C.6/55/WG.1/CRP.13	Article 2
14. Germany	A/C.6/55/WG.1/CRP.14	Article 3
15. Bolivia, Chile, Costa Rica and Ecuador	A/C.6/55/WG.1/CRP.15	Article 2
16. United Kingdom of Great Britain and Northern Ireland	A/C.6/55/WG.1/CRP.16	New article
17. India	A/C.6/55/WG.1/CRP.17	Revised text of article 8
18. Sudan	A/C.6/55/WG.1/CRP.18	Articles 2 and 3
19. Syrian Arab Republic	A/C.6/55/WG.1/CRP.19	Article 6, paragraph 2 (d) (A/C.6/55/WG.1/CRP.8)

[2] See A/C.6/55/L.2, annex III.

Country	*Symbol*	*Subject*
20. Lebanon	A/C.6/55/WG.1/CRP.20	Article 6, paragraph 2 (A/C.6/55/WG.1/CRP.8)
21. Cameroon	A/C.6/55/WG.1/CRP.21	Article 11, paragraph 1
22. Sri Lanka and Turkey	A/C.6/55/WG.1/CRP.22 and Corr.1	Article 7
23. Draft report of the Working Group	A/C.6/55/WG.1/CRP.23 and Add.1-3	
24. Syrian Arab Republic	A/C.6/55/WG.1/CRP.24	Article 11, paragraph 2 (A/C.6/55/WG.1/CRP.8)
25. Cameroon	A/C.6/55/WG.1/CRP.25	Article 6, paragraph 2 (A/C.6/55/WG.1/CRP.8)
26. Côte d'Ivoire	A/C.6/55/WG.1/CRP.26	Article 1
27. Switzerland	A/C.6/55/WG.1/CRP.27	New preambular paragraph
28. New Zealand and Switzerland	A/C.6/55/WG.1/CRP.28	Article 18, paragraph 2
29. Switzerland	A/C.6/55/WG.1/CRP.29	Article 7
30. Malaysia on behalf of the OIC Group	A/C.6/55/WG.1/CRP.30	Articles 1 and 2
31. Switzerland	A/C.6/55/WG.1/CRP.31	Article 2, paragraph 1
32. Austria	A/C.6/55/WG.1/CRP.32	Article 2, paragraph 1
33. Nigeria	A/C.6/55/WG.1/CRP.33	Article 2, paragraph 1
34. Angola	A/C.6/55/WG.1/CRP.34	Article 1
35. India	A/C.6/55/WG.1/CRP.35	Article 2
36. Qatar	A/C.6/55/WG.1/CRP.36	Article 18
37. Lebanon and Syrian Arab Republic	A/C.6/55/WG.1/CRP.37	New preambular paragraphs
38. Lebanon and Syrian Arab Republic	A/C.6/55/WG.1/CRP.38	Articles 1 and 18

Annex IV

Informal summary of the general discussion in the Working Group, prepared by the Chairman

1. All delegations stated their unequivocal condemnation of terrorism in all its forms and manifestations and underscored that international terrorism posed a global threat to international peace and security and to basic human values. They also emphasized that acts of terrorism were criminal and unjustifiable, wherever and by whomsoever committed, and regardless of their form, motive or origin. Delegations strongly condemned the terrorist attacks which had taken place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and which were characterized as heinous crimes against the entire human civilization and democratic societies. They expressed their condolences to the families of the victims and to the peoples of the United States of America and of the other countries whose nationals were victims of such an unprecedented crime.

2. It was further observed that the fight against terrorism required a global effort based on international cooperation and international law, with due regard for human rights, and that it must go hand in hand with the search for lasting solutions to the human tragedies and political problems contributing to the instability which nurtured terrorist groups.

3. In addition to reporting various activities being undertaken at the national, regional and international levels aimed at combating the scourge of terrorism, delegations expressed support for the role of the United Nations as the main multilateral mechanism for mobilizing the international community in its fight against terrorism. Delegations underscored the importance of the establishment of an effective international legal regime, in line with Security Council resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, and recalled the various statements made during the General Assembly debate on measures to eliminate international terrorism, held from 1 to 5 October 2001. States were urged to become parties to the existing sectoral anti-terrorism conventions, to the extent that they had not already done so, including those elaborated within the framework of the Ad Hoc Committee, and to fully implement all such instruments.

A. Elaboration of a draft comprehensive convention on international terrorism

4. Delegations reiterated the urgency of adopting a comprehensive convention on international terrorism with the aim of extending and strengthening the existing legal regime against terrorism. There was agreement that, in the light of the recent terrorist acts in the host country, it was of vital importance that the Working Group should conclude its work on the comprehensive convention with a view to its adoption at the current session of the General Assembly. At the same time, concerns were expressed regarding the effectiveness of a future comprehensive convention if it was not universally accepted and if the underlying causes of terrorism were not addressed. The view was expressed that consistency with existing norms of international law, including those relating to international terrorism, was a necessary precondition for such universal acceptance.

5. Support was expressed for the draft text of the comprehensive convention submitted by the delegation of India, which was considered to be a solid basis for discussion in the Working Group. The hope was also expressed that all delegations would demonstrate the necessary political will and commitment, in a spirit of cooperation, so as to resolve outstanding issues.

6. With respect to the scope of the convention, several speakers favoured its broad application. Suggestions were made, inter alia, to include in the list of offences within the coverage of the convention terrorism in all its forms and manifestations, terrorist threats, acts causing serious damage to the environment and economy, as well as various derivative offences such as the undertaking of preparatory acts. It was also suggested that the acts of armed forces of States should not be excluded from the scope of the convention. Conversely, the view was expressed that the convention should not duplicate the provisions of the Charter of the United Nations or other norms of international law governing the conduct of States or replace the norms of international humanitarian law applicable to armed conflicts. It was observed that the main objective of the Working Group should be to further develop international rules concerning individual liability for terrorist crimes so that the perpetrators of such crimes could be brought to justice throughout the world.

7. Support was expressed for the approach taken in the draft text, i.e. opting for an operational definition of the perpetration of terrorist acts rather than attempting to define the phenomenon of terrorism. Others, in calling for a more comprehensive and exhaustive definition, pointed to some of the shortcomings of the draft text, for example that the proposed definition did not sufficiently cover certain offences and means for their commission, and that it failed to provide for the liability of legal persons. It was also suggested that the definition should be formulated in clear and specific terms so as to avoid ambiguity, politically motivated interpretations and selective application of the convention. The concern was expressed that the terms used for defining offences within the meaning of the convention were excessively broad, allowing for the criminalization of activities which otherwise would not have been considered to be a violation of international law. Several delegations insisted that the convention should unequivocally distinguish terrorism from the legitimate struggle in the exercise of self-determination and independence of all peoples under foreign occupation, and expressed support in that regard for the proposal contained in document A/C.6/55/WG.1/CRP.30.

8. Support was expressed for the inclusion of a provision clarifying the relationship of the comprehensive convention with existing sectoral conventions. It was suggested that the comprehensive convention should contribute added value to existing sectoral conventions by, inter alia, overcoming their shortcomings, while preserving the achievements of those conventions. The view was also expressed that the convention would be an important instrument in its own right and should be sufficiently forward-looking, so as to provide more efficient ways of combating existing and new forms of terrorism.

9. It was suggested that the convention should provide for an effective mechanism for cooperation among States in order to bring to justice the perpetrators of terrorist acts. In particular, it was observed that States should ensure the apprehension and prosecution or extradition of such persons. States were also called upon to prevent abuse of the right of asylum and not to provide refuge to persons

involved in terrorist acts. It was reiterated that political motivations should not constitute grounds for States to refuse requests for extradition of the perpetrators. At the same time, it was noted that the relevant provisions of the convention should be carefully drafted so as to conform with universally recognized human rights and the right of States to grant asylum in conformity with international law.

B. Elaboration of a draft international convention for the suppression of acts of nuclear terrorism

10. Delegations reiterated their support for the speedy finalization of the draft international convention for the suppression of acts of nuclear terrorism and for the early adoption of the convention. It was observed that the risk that certain terrorist groups might already have obtained access to weapons of mass destruction and could resort to their use added urgency to this task. Delegations were called upon to continue, in the spirit of compromise and constructive cooperation, searching for broadly acceptable solutions with regard to the outstanding issues of the scope of application of the convention. It was noted in that regard that the completion of the work on a comprehensive convention on international terrorism should facilitate the work on the finalization of an international convention on nuclear terrorism. Support was voiced for the continuation of informal consultations on the topic, under the guidance of the coordinator.

C. Question of convening a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations

11. Support was reaffirmed for the proposal to convene a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. At the same time, the importance of evaluating the objectives and possible outcome of such a conference was emphasized. Several delegations indicated their willingness to participate in the discussion of the question of convening the proposed conference insofar as it could lead to a tangible strengthening of international cooperation in combating the scourge of international terrorism.

12. A view was expressed that the conference should result in the adoption of concrete measures aimed at combating terrorism. Statements were made in favour of convening such a conference after the completion of the negotiations on the comprehensive convention on international terrorism, so as to promote its universal acceptance and implementation together with sectoral conventions in the field. It was suggested that the comprehensive convention on international terrorism and the convention for the suppression of acts of nuclear terrorism could be adopted at the conference, or that a signing ceremony could be held at the conference. Similarly, it was pointed out that the conference could focus on the elaboration of a global plan of action aimed at promoting and implementing relevant international instruments adopted under the auspices of the United Nations. It was also observed that organizing a meeting of government experts from various national anti-terrorist agencies could usefully contribute to the preparation of such a conference. A further

view was expressed that the proposed conference should examine the root causes of terrorism.

13. The view was also expressed that the purpose of the proposed conference had been largely achieved by the General Assembly debate on measures to eliminate international terrorism, held in early October 2001. It was further pointed out that, following the important measures recently adopted by the Security Council in this field, the General Assembly should, for its part, discharge its responsibility by concentrating on attaining concrete results in the Sixth Committee.